

## Introduced by Senator Cedillo

February 16, 2005

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An act to amend Section 1382 of the Penal Code, relating to criminal procedure.

## LEGISLATIVE COUNSEL'S DIGEST

SB 330, as introduced, Cedillo. Criminal proceedings: mental competency.

Existing law requires a court, unless good cause to the contrary is shown, to order a criminal action to be dismissed in certain circumstances, including when a defendant in a misdemeanor or infraction case is not brought to trial within a specified period.

This bill would, in addition, require an action to be dismissed if a defendant in a misdemeanor or infraction case is not brought to trial within 10 days after the date of the reinstatement of criminal proceedings pursuant to the provisions of law governing the mental competency of defendants.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1382 of the Penal Code is amended to
- 2 read:
- 3 1382. (a) The court, unless good cause to the contrary is
- 4 shown, shall order the action to be dismissed in the following
- 5 cases:
- 6 (1) When a person has been held to answer for a public
- 7 offense and an information is not filed against that person within
- 8 15 days.

(2) In a felony case, when a defendant is not brought to trial within 60 days of the defendant's arraignment on an indictment or information, or reinstatement of criminal proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2, or, in case the cause is to be tried again following a mistrial, an order granting a new trial from which an appeal is not taken, or an appeal from the superior court, within 60 days after the mistrial has been declared, after entry of the order granting the new trial, or after the filing of the remittitur in the trial court, or after the issuance of a writ or order which, in effect, grants a new trial, within 60 days after notice of the writ or order is filed in the trial court and served upon the prosecuting attorney, or within 90 days after notice of the writ or order is filed in the trial court and served upon the prosecuting attorney in any case where the district attorney chooses to resubmit the case for a preliminary examination after an appeal or the issuance of a writ reversing a judgment of conviction upon a plea of guilty prior to a preliminary hearing. However, an action shall not be dismissed under this paragraph if either of the following circumstances exist:

(A) The defendant enters a general waiver of the 60-day trial requirement. A general waiver of the 60-day trial requirement entitles the superior court to set or continue a trial date without the sanction of dismissal should the case fail to proceed on the date set for trial. If the defendant, after proper notice to all parties, later withdraws his or her waiver in the superior court, the defendant shall be brought to trial within 60 days of the date of that withdrawal. If a general time waiver is not expressly entered, subparagraph (B) shall apply.

(B) The defendant requests or consents to the setting of a trial date beyond the 60-day period. Whenever a case is set for trial beyond the 60-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter.

Whenever a case is set for trial after a defendant enters either a general waiver as to the 60-day trial requirement or requests or consents, expressed or implied, to the setting of a trial date beyond the 60-day period pursuant to this paragraph, the court may not grant a motion of the defendant to vacate the date set for

1 trial and to set an earlier trial date unless all parties are properly  
2 noticed and the court finds good cause for granting that motion.

3 (3) Regardless of when the complaint is filed, when a  
4 defendant in a misdemeanor or infraction case is not brought to  
5 trial within 30 days after he or she is arraigned or enters his or  
6 her plea, whichever occurs later, if the defendant is in custody at  
7 the time of arraignment or plea, whichever occurs later, or in all  
8 other cases, within 45 days after the defendant's arraignment or  
9 entry of the plea, whichever occurs later, or in case the cause is to  
10 be tried again following a mistrial, an order granting a new trial  
11 from which no appeal is taken, or an appeal from a judgment in a  
12 misdemeanor or infraction case, within 30 days after the mistrial  
13 has been declared, after entry of the order granting the new trial,  
14 or after the remittitur is filed in the trial court, *or within 10 days*  
15 *after the date of the reinstatement of criminal proceedings*  
16 *pursuant to Chapter 6 (commencing with Section 1367).*  
17 However, an action shall not be dismissed under this subdivision  
18 if any of the following circumstances exist:

19 (A) The defendant enters a general waiver of the 30-day or  
20 45-day trial requirement. A general waiver of the 30-day or  
21 45-day trial requirement entitles the court to set or continue a  
22 trial date without the sanction of dismissal should the case fail to  
23 proceed on the date set for trial. If the defendant, after proper  
24 notice to all parties, later withdraws his or her waiver, the  
25 defendant shall be brought to trial within 30 days of the date of  
26 that withdrawal. If a general time waiver is not expressly entered,  
27 subparagraph (B) shall apply.

28 (B) The defendant requests or consents to the setting of a trial  
29 date beyond the 30-day or 45-day period. In the absence of an  
30 express general time waiver from the defendant, the court shall  
31 set a trial date. Whenever a case is set for trial beyond the 30-day  
32 or 45-day period by request or consent, expressed or implied, of  
33 the defendant without a general waiver, the defendant shall be  
34 brought to trial on the date set for trial or within 10 days  
35 thereafter.

36 (C) The defendant in a misdemeanor case has been ordered to  
37 appear on a case set for hearing prior to trial, but the defendant  
38 fails to appear on that date and a bench warrant is issued, or the  
39 case is not tried on the date set for trial because of the  
40 defendant's neglect or failure to appear, in which case the

1 defendant shall be deemed to have been arraigned within the  
2 meaning of this subdivision on the date of his or her subsequent  
3 arraignment on a bench warrant or his or her submission to the  
4 court.

5 (b) Whenever a defendant has been ordered to appear in  
6 superior court on a felony case set for trial or set for a hearing  
7 prior to trial after being held to answer, if the defendant fails to  
8 appear on that date and a bench warrant is issued, the defendant  
9 shall be brought to trial within 60 days after the defendant next  
10 appears in the superior court unless a trial date previously had  
11 been set which is beyond that 60-day period.

12 (c) If the defendant is not represented by counsel, the  
13 defendant shall not be deemed under this section to have  
14 consented to the date for the defendant's trial unless the court has  
15 explained to the defendant his or her rights under this section and  
16 the effect of his or her consent.